IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 9938 of 2001

Between:

M/s. The Nizam Club, Rep. by its President,
Saifabad, Hyderabad.

..... PETITIONER

AND

1 Government of Andhra Pradesh, Rep. by the Secretary,
Prohibition & Excise, Secretariat,
Hyderabad.
2 The Commissioner of Prohibition & Excise,
Hyderabad District, Andhra Pradesh.
3 The Superintendent of Prohibition & Excise,
Hyderabad District, Andhra Pradesh.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the clause 6 of G.O.Ms.No.464 dt: 14-7-2000 as illegal, arbitrary, contrary to the provisions of the A.P., Excise Act and the rules framed thereunder and unconstitutional and consequently set aside the said clause.

Counsel for the Petitioner:MS. G. JHANSI, REPRESENTING MR.B.ADINARAYANA RAO , Advocate

Counsel for the Respondent Nos.1 to 3: GP FOR PROHIBITION & EXCISE

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.9938 OF 2001

ORDER:

The Nizam Club, Hyderabad, impugns clause 6 of G.O.Ms.No.464, dt.14.7.2000 as *ultra vires* the provisions of A.P.Excise Act,1968 (for short, the Act). The fact of the matter is in a narrow compass.

The petitioner is a society registered under A.P. (Telangana Area) Public Societies Registration Act, 1350 fasli. It was established in 1984 with a view to provide social and cultural facilities including food and beverages to the members on non-profitable basis. The club has about four thousand members on its rolls. The petitioner obtained licence for its bar room in form IL-20 under A.P.Indian Liquor and Foreign Liquor Rules, 1970 (for short, the Rules) and the same was renewed for the year 2001-2002.

It is the case of the petitioner that the members and their families make themselves comfortable within the club premises rounded by a wall or in the rooms or in the varandah as well as open lawns depending on the availability of space and individual option. The staff of the club attend to the members wherever they sit in the club and cater to their needs. According to the petitioner, as per IL-20 licence, liquor can be served anywhere within the premises of the club, but the Government of Andhra Pradesh amended the Rules by issuing notification vide G.O.Ms.No.464, dt.14.7.2000 whereby and whereunder by Clause 6 of the said G.O., special condition No.1 in IL-20 licence is sought to be amended prohibiting serving of alcoholic drinks in club, except in bar room. Clause 6 of the G.O. is assailed in the Writ Petition.

Learned counsel for the petitioner, Ms.G.Jhansi, submits that amendment made to condition No.1 in form IL-20 is irrational and arbitrary. According to the learned counsel, though members visit the club with their families, no complaint was ever received by any member of the club that serving of alcoholic drinks in rooms, corridors, lawns and other open spaces (other than bar room) is causing any inconvenience and any embarrassment to any of the members.

Special Condition No.1 in form IL-20 before it was amended by G.O.Ms.No.464, dt.14.7.2000 reads as under.

> The privilege extends only to the consumption of all kinds of Indian Liquor/Foreign Liquor and Beer and other drinks containing alcohol which may be served only in rooms, verandahs and open spaces reserved for the purposes and duly approved by the Commissioner.

By reason of the amendment, above condition was entirely substituted by the following.

> The privilege extends only to the consumption of all kinds of Indian Liquor/Foreign Liquor and Beer and other drinks containing alcohol, which may be served only in bar room. If liquor is to be served on special occasions outside the approved premises (bar room) namely, in varandahs, open space and rooms other than approved rooms, occasional licence in Form IL-22 must be obtained.

A reading of the licence would show that all the general conditions applicable to Indian Liquor/Foreign Liquor and Beer licences shall also apply to club licence. The licence for sale of Indian Liquor/Foreign Liquor is given in form IL-24 in case it is a shop, and in form IL-17 in case it is a bar. A bar licence enables the licensee to sell alcoholic liquor to be consumed on the premises whereas the holder of licence in form IL-24 can sell liquor for removal from the licenced premises in sealed receptacles not exceeding six Quarts in respect of Indian liquor and Foreign liquor, and or twelve bottles of Beer. These conditions are intended to regulate the sale of alcoholic drinks. The State has exclusive privilege to deal in liquor and while giving licence apart with such privilege the State is entitled to impose such conditions as they deem fit. Even before special condition No.1 was amended there was a condition imposed in IL-20 that if liquor is to be served outside the premises like in varandah, open space and rooms occasional, licence in form IL-22 has to be obtained. The premises is to be clarified as meaning bar room. Therefore, what is done by the Government is only to clarify further and prohibit the consumption of liquor in other places of the club premises permitting consumption only in bar room. The same cannot be said to be in contravention of any provisions of the Act nor learned counsel for the petitioner made any attempt to demonstrate the contention that the impugned amendment is *ultra vires* the Act.

A club, it may be inferred, is a large area and IL-20 licence enables the club to open bar/room. This licence enables the club to sell liquor to the members of the club alone to be consumed on the premises of the club. This is clarified in special condition No.1 to the effect that alcohol can be consumed on the premises of the club only in bar room. Bar room is also part of the premises and therefore there is no irrationality or arbitrary in the same. Further, admittedly the petitioner club was established for the purpose of providing various social, cultural, sports and recreational facilities including food and beverages and therefore if consumption of alcohol is allowed at all places where sports, cultural, social and recreational

facilities are provided, it would certainly cause inconvenience to other members of the club. Therefore, there was every justification to restrict consumption of alcohol in bar room only.

The petitioner has placed before this Court IL-20 licence No.1/I.L.20/2000, dt.7.9.2000 valid till 31.3.2001. Even the said licence contains the impugned condition, which was substituted by G.O.Ms.No.464, dt.14.7.2000. The petitioner accepted the club licence subject to the conditions therein and therefore he cannot be allowed to turn around and challenge the condition when the grant of licence itself is subject to various conditions. Under Section 17 of the Act, the Government has exclusive privilege to grant licence subject to such conditions as they deem fit for selling liquor in retail. The conditions are laid down in the Rules as well as in the licence itself. In that view of the matter, petitioner, who is a licensee of IL-20 cannot be heard to complain of the conditions as the conditions form inseparable part of the licence.

The Writ Petition is devoid of merit and is accordingly dismissed.

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(V.V.S.RAO, J)

29.6.2005

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To

1 The Secretary to Government of Andhra Pradesh,
Prohibition & Excise Department, Secretariat,
Hyderabad.
2 The Commissioner of Prohibition & Excise,
Hyderabad District, Hyderabad, Andhra Pradesh.
3 The Superintendent of Prohibition & Excise,
Hyderabad District, Andhra Pradesh.

4 2 CCs to G.P. for Prohibition and Excise, High Court Bldgs.

Hyderabad (OUT)

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